No. 09-1506

Supreme Court, U.S.
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In The

Supreme Court of the United States

RANDALL M. JONES,

Petitioner,

v.

ANHEUSER-BUSCH, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where the Eleventh Circuit's opinion affirming the District Court's denial of Petitioner's Motion for Reconsideration does not conflict with a decision of this Court or a Court of Appeals, and where Petitioner does not claim that the Eleventh Circuit's ruling implicates an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT

Respondent Anheuser-Busch, Inc., a nongovernmental corporate party to this proceeding, is a subsidiary of Anheuser-Busch Companies, Inc. ("ABC"), and ABC is a wholly owned indirect subsidiary of Anheuser-Busch In-Bev NV/SA ("AB In-Bev"), which is publicly traded. Other than AB In-Bev, no publicly-held company owns 10 percent or more of Anheuser-Busch, Inc.'s stock.

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STATEMENT OF THE CASE

Petitioner filed suit *pro se* against Anheuser-Busch, Inc. ("Anheuser-Busch") on October 19, 2007, in the United States District Court for the Northern District of Georgia. Petitioner then obtained counsel and filed his First Amended Complaint on January 17, 2008. Petitioner alleged that Anheuser-Busch discriminated against him based on his race, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981, when Anheuser-Busch terminated his employment on August 24, 2006.

Anheuser-Busch served its First Interrogatories and First Requests for Production of Documents on Petitioner on May 14, 2008. On August 4, 2008, Anheuser-Busch filed a Motion for Sanctions, or in the Alternative, Motion to Compel Discovery and Extend the Discovery Period. In its Motion, Anheuser-Busch stated that Petitioner had failed to respond to Anheuser-Busch's discovery requests. Anheuser-Busch sought an order from the District Court dismissing Petitioner's action for failure to cooperate in discovery, or, in the alternative, compelling Petitioner to respond to Anheuser-Busch's discovery requests.

Petitioner did not respond to Anheuser-Busch's Motion. On August 25, 2008, the Magistrate Judge entered an order compelling Petitioner to serve responses to Anheuser-Busch's discovery requests within ten days of the date of the order. The Magistrate Judge specifically cautioned Petitioner that failure to

comply with the order would result in the Magistrate Judge recommending that Petitioner's action be dismissed. The Magistrate Judge instructed Anheuser-Busch to notify the Court if Petitioner failed to comply with the order.

On September 18, 2008, Anheuser-Busch notified the Magistrate Judge that Petitioner had failed to serve discovery responses, in violation of the Magistrate Judge's August 25, 2008 order. The Magistrate Judge issued a Final Report and Recommendation on October 2, 2008, recommending that Petitioner's action be dismissed for failure to cooperate in discovery and failure to comply with the Magistrate Judge's August 25, 2008 order.

Petitioner filed no objections to the Magistrate Judge's Report and Recommendation. The District Court adopted the Report and Recommendation on October 23, 2008. The District Court dismissed Petitioner's action with prejudice and directed the Clerk to enter a judgment in favor of Anheuser-Busch, including an award of expenses of $925.00. Judgment was entered on October 23, 2008.

On December 18, 2008, Petitioner, acting *pro se*, filed a Motion for Reconsideration of the District Court's order adopting the Report and Recommendation and dismissing Petitioner's action with prejudice. In Petitioner's Motion for Reconsideration, Petitioner asked the District Court to reconsider its order dismissing his action based "on grounds of faulty attorney" and asked that the District Court "not hold [him]

accountable for [his] attorney's action or non action." The District Court denied Petitioner's Motion for Reconsideration on December 19, 2008.

Petitioner filed his Notice of Appeal on January 6, 2009. The Eleventh Circuit *sua sponte* dismissed Petitioner's appeal in part on February 9, 2009, holding that Petitioner's Notice of Appeal was untimely to appeal the District Court's judgment entered on October 23, 2008. The Eleventh Circuit, however, permitted Petitioner to go forward with his appeal of the District Court's December 19, 2008 order denying Petitioner's Motion for Reconsideration, construing the Motion as one for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure. After full briefing, the Eleventh Circuit affirmed the District Court's order, holding that the District Court did not abuse its discretion in denying Petitioner's Motion for Reconsideration. Petitioner now seeks review of the Eleventh Circuit's decision.

REASONS FOR DENYING THE PETITION

I. PETITIONER HAS PRESENTED NO COMPELLING REASONS FOR REVIEW

Petitioner has not identified any conflict with a decision of this Court or any Court of Appeals in the decisions below. Indeed, no such conflict exists. Nor do the decisions below implicate a federal question that has not been decided by this Court. As set forth below, the only questions presented for review by

Petitioner – a claimed intervening change in law and an error in the District Court's findings of fact – are without factual or legal basis. Consequently, Petitioner has not carried his burden of demonstrating any "compelling reasons" for the Petition to be granted. Sup. Ct. R. 10.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION

The Eleventh Circuit construed Petitioner's *pro se* Motion for Reconsideration of the order dismissing his action as a motion for relief of judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. *Mahone v. Ray*, 326 F.3d 1176, 1178 n.1 (11th Cir. 2003). A ruling on a Rule 60(b) motion is reviewed "only for abuse of discretion . . . an appeal from the denial of Rule 60(b) relief does not bring up the underlying judgment for review." *Browder v. Dir., Dep't of Corr.*, 434 U.S. 257, 263 n.7 (1978). "The question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in doing so." *NHL v. Metro. Hockey Club*, 427 U.S. 639, 642 (1976) (per curiam). Review for abuse of discretion "presupposes a zone of choice within which the trial courts may go either way." *Guideone Elite Ins. Co. v. Old Cutler Presbyterian Church, Inc.*, 420 F.3d 1317, 1325 (11th Cir. 2005). Accordingly, when applying an abuse of discretion standard, a court's ruling will remain undisturbed "unless . . . the district court has made a clear

error of judgment, or has applied the wrong legal standard." *Id.* The District Court is therefore granted "'considerably more leeway'" in the review of its decision. *Young v. City of Palm Bay*, 358 F.3d 859, 863 (11th Cir. 2004) (quoting *Cason v. Seckinger*, 231 F.3d 777, 786 (11th Cir. 2000)).

The Court of Appeals correctly held that the District Court's denial of Petitioner's motion was well within its discretion, where Petitioner argued that the dismissal of his case should be reversed on the ground of "faulty attorney."[1] Indeed, this Court has specifically held that a district court does not abuse its discretion in dismissing a case based on counsel's dilatory conduct because "each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'" *Link v. Washburn R.R. Co.*, 370 U.S. 626, 634 (1962) (holding that where party "voluntarily chose this attorney as his representative . . . he cannot now avoid the consequences of the acts and omissions of this freely selected agent" and to hold otherwise "would be wholly inconsistent with our system of representative litigation").

In short, this is an unremarkable case in which the District Court properly exercised its discretion in

[1] Petitioner challenged the District Court's decision on other grounds, but the Eleventh Circuit did not consider those arguments because they were never raised before the District Court. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004).

denying Petitioner's *pro se* Motion for Reconsideration. Petitioner has presented no compelling reason for this Court's review of that decision.

III. NO INTERVENING CHANGE IN LAW HAS OCCURRED TO AFFECT PETITIONER'S APPEAL

Petitioner contends that the Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (2009) ("Ledbetter Act"), "is an intervening change of law."

The Ledbetter Act "amend[ed] Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and . . . modif[ied] the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice. . . ." 123 Stat. at 5.

The only issue for review before the Court is whether the Eleventh Circuit erred in affirming the District Court's denial of Petitioner's Motion for Reconsideration. The Ledbetter Act has no bearing on this Court's review of that decision.

The merits of Petitioner's case in the District Court are not before this Court for review, but even if they were, the Ledbetter Act still would have no application in the underlying case. Petitioner raised

no claims of pay discrimination in his Complaint or First Amended Complaint. The only discriminatory act Petitioner alleged was the termination of his employment on August 24, 2006.

As Petitioner cannot establish that any intervening change in law has occurred that would affect this appeal, he has failed to show any compelling reason for review of the Eleventh Circuit's decision on this basis.

IV. PETITIONER WAIVED ARGUMENTS NOT RAISED BELOW

Petitioner asserts in his Petition that the District Court committed "a clear error of facts" when it concluded his failure to cooperate in discovery indicated Petitioner had no interest in pursuing his case. Petitioner failed to raise such an argument in the courts below; therefore, it is deemed waived. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002). In addition, as set forth above, the District Court properly exercised its discretion in determining Petitioner was bound by the actions of his attorney. Accordingly, this argument presents no compelling reason for this Court's review.

CONCLUSION

Petitioner has failed to identify any compelling reason for the Court to grant his Petition. Anheuser-Busch respectfully requests that the Petition be denied.

Respectfully submitted,

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